

APR 12/21/07

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AA 740-07 S. Sweet Properties, LLC
VAR 0418

51829-6387

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor



Margaret G. McHale
Chair

Ren Serey
Executive Director

**STATE OF MARYLAND
CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS**

1804 West Street, Suite 100, Annapolis, Maryland 21401

(410) 260-3460 Fax: (410) 974-5338

www.dnr.state.md.us/criticalarea/

December 27, 2007

Ms. Suzanne Schappert
Anne Arundel County
Office of Planning and Zoning
2664 Riva Road, MS 6301
Annapolis, MD 21401

Re: 2007-0418-V – Sweet Properties LLC

Dear Ms. Schappert:

Thank you for forwarding information on the above-referenced project. This lot is 5,000 square feet and is located in the lot is Limited Developed Area (LDA). The applicant proposes to build a single family dwelling and driveway for a total of impervious surface in the amount of 1,496 square feet, which is within the limits for a lot of this size. The applicant proposes to impact 3,741 square feet of nontidal wetlands and the 25-foot buffer to the wetlands. The applicant also proposes to clear 2,766 square feet, or 55% of this lot.

Provided the lot is properly grandfathered, we do not oppose this variance request for the construction of a modest sized dwelling and driveway on this lot. If the County determines this request, or some variation of this request can be granted, we recommend 3:1 mitigation for the area of impact to the nontidal wetlands and the 25-foot buffer. If mitigation cannot be done on site, a fee in lieu may be substituted. The applicant has shown three raingardens on the site plan and should provide the specifications for the raingardens to the County. Also, we recommend moving the TSA, if possible, out of the 25-foot buffer.

Permits from MDE may also be required to impact non-tidal wetlands. Please have the Hearing Officer ensure that any necessary MDE permits are obtained prior to the granting of the variance.

Ms. Suzanne Schappert
12/27/2007
Page 2 of 2

Please include this letter in your file and submit it as part of the record for variance. Please notify the Commission of the decision made in this case. I can be reached at 410-260-3476 should you have any questions.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Julie', followed by a long, horizontal, slightly wavy line that extends to the right.

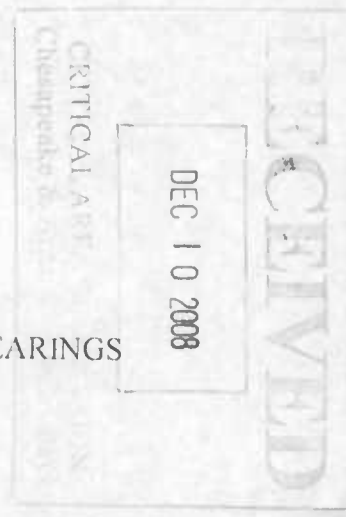
Julie Roberts
Natural Resources Planner

cc: Judy Cole, Maryland Department of the Environment

AA 740-07

JR

746-07



IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER 2007-0418-V

S. SWEET PROPERTIES

SEVENTH ASSESSMENT DISTRICT

DATE HEARD: DECEMBER 2, 2008

ORDERED BY: STEPHEN M. LeGENDRE, ADMINISTRATIVE HEARING OFFICER

PLANNER: WILLIAM ETHRIDGE

DATE FILED: DECEMBER 5th, 2008

PLEADINGS

S. Sweet Properties, LLC, the applicant, seeks a variance (2007-0418-V) to allow a dwelling with less buffer than required on property located along the south side of Poplar Avenue, west of Park Avenue, Shady Side.

PUBLIC NOTIFICATION

The hearing notice was posted on the County's web site in accordance with the County Code. The file contains the certification of mailing to community associations and interested persons. Each person designated in the application as owning land that is located within 175 feet of the property was notified by mail, sent to the address furnished with the application. Robert Baxter, the applicant's engineering consultant, testified that the property was posted for more than 14 days prior to the hearing. I find and conclude that there has been compliance with the notice requirements.

FINDINGS AND CONCLUSIONS

This case concerns unimproved property with a street address of 1229 Poplar Avenue, in the subdivision of Cedar Hurst on the Bay, Shady Side. The property comprises 5,000 square feet and is zoned R5 residential with a Chesapeake Bay Critical Area designation as Limited Development Area (LDA). The request is to develop the property with a single-family dwelling to be served by well and septic. The project disturbs the 25-foot buffer to nontidal wetlands.

Anne Arundel County Code, Article 17, Section 17-8-502 proscribes the disturbance of habitat protection areas. Accordingly, the proposal requires a variance to the nontidal wetlands buffer.

William Ethridge, a planner with the Office of Planning and Zoning, testified that the property is below the minimum area and width for the district. The northwest corner of the property is located in nontidal wetlands; the 25-foot buffer to nontidal wetlands bisects the property from the southwest to the northeast corners. The applicant is proposing a modest footprint with lot coverage less than the allowance (1,496 square feet vs. 1,750 square feet). Mr. Ethridge summarized the agency comments. The County Department of Health requested plan approval. The Chesapeake Bay Critical Area Commission recommended mitigation, the relocation of the temporary stockpile outside the buffer to nontidal wetlands and authorization from the Maryland Department of the Environment (MDE). The County's Development Division requested relocating the rain gardens outside the buffer to nontidal wetlands. By way of ultimate conclusion, Mr. Ethridge offered conditional support for the application.

Mr. Baxter testified that the site plan has been revised to relocate the rain garden outside the buffer to nontidal wetlands; similarly, the temporary stockpile can also be moved. Authorization from MDE is pending. The applicant is also in the process of obtaining easements from abutting owners in order to extend Poplar Avenue from Park Avenue to the east to the property.

Bill Garity, who resides to the west of the nontidal wetlands, sought and received assurance that the property will not be served by septic.

Nancy Jenkins, who resides to the rear, opposed the application on the alternate grounds that opening the road will lead to other development, the applicant's property floods and there will be adverse environmental impacts.

Upon review of the facts and conclusion, I find and conclude that the applicant is entitled to conditional relief from the code. For this Critical Area property, due to the extent of the nontidal wetlands buffer, a strict implementation of the program would result in an unwarranted hardship. To literally interpret the program would deny the applicant the right to develop the property with a single-family dwelling, a right commonly enjoyed by other properties in similar areas of the Critical Area. Conversely, the granting of the variance is not a special privilege that the program typically denies. There is no indication that the request results from the actions of the applicant or from land use on neighboring property.

I further find that the variance represents the minimum relief. The dwelling is appropriately sized. It is wholly outside the nontidal wetlands. The applicant has already relocated the rain garden outside the buffer and will do the same for the stockpile. There was nothing to suggest that the granting of the variance will alter the essential character of the neighborhood, substantially impair the use or development of adjacent property or cause a detriment to the public welfare. The approval is subject to the conditions in the Order.

ORDER

PURSUANT to the application of S. Sweet Properties, LLC, petitioning for a variance to allow a dwelling with less buffer than required, and

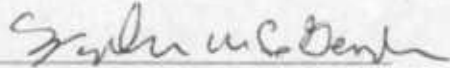
PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is this 5th day of December, 2008,

ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicant is **granted** a variance to disturb the nontidal wetlands buffer to allow a dwelling and associated facilities in accordance with the site plan.

The foregoing variance is subject to the following conditions:

1. The temporary stockpile shall be located outside the buffer to nontidal wetlands.
2. The building permit is subject to the approval of the Department of Health.
3. The applicant shall provide mitigation and stormwater management as determined by the Permit Application Center.
4. No further expansion of the dwelling is allowed and accessory structures are not allowed.
5. The applicant shall obtain authorization from MDE to disturb the nontidal wetlands buffer.

6. The conditions of the approval run with the land and shall be included in any contract of sale.


Stephen M. LeGendre
Administrative Hearing Officer

NOTICE TO APPLICANT

Within thirty days from the date of this Decision, any person, firm, corporation, or governmental agency having an interest therein and aggrieved thereby may file a Notice of Appeal with the County Board of Appeals. **A permit for the activity that was the subject of this variance application will not be issued until the appeal period has elapsed.**

Further Section 18-16-405(a) provides that a variance expires by operation of law unless the applicant obtains a building permit within 18 months. Thereafter, the variance shall not expire so long as construction proceeds in accordance with the permit.

If this case is not appealed, exhibits must be claimed within 60 days of the date of this Order, otherwise they will be discarded.

CEDARHUSRT ON THE BAY

1229 POPLAR AVENUE

CRITICAL AREA REPORT

PREPARED FOR:
DIVERSIFEID PERMITS, INC.
POST OFFICE BOX 242
MILLERSVILLE, MD 21108

PREPARED BY:
CATTAIL CONSULTING, INC.
POST OFFICE BOX 1599
SEVERNA PARK, MD 21146

410-544-0133

NOVEMBER 2007

CHESAPEAKE BAY CRITICAL AREA REPORT
CHECK LIST
Anne Arundel County, Maryland



TO: Property Owners in the Chesapeake Bay Critical Area

DATE: 11-29-07

FROM: Department of Planning and Code Enforcement

SUBJECT: Information Required for Submission of Critical Area Report - Zoning Applications

Zoning Case Number _____ Applicant's Name SWEET, S. SAM
Critical Area Classification: LDA/RCA/IDA; Tax Map 69 Block 18 Parcel 235

Your property is located within the Chesapeake Bay Critical Area. In reviewing your application, Planning and Code Enforcement must determine the impact your proposal will have on stormwater management and plant and animal habitat in conformance to Critical Area criteria. Your plan must meet the criteria for your classification and satisfy COMAR 14.15.11 regarding variances. You are responsible for supplying five copies of the VICINITY MAP, NARRATIVE STATEMENT AND PLAN to the Zoning Administration Division of the Department of Planning and Code Enforcement with your zoning application. Applications within the Critical Area will not be accepted without a complete Critical Area Report.

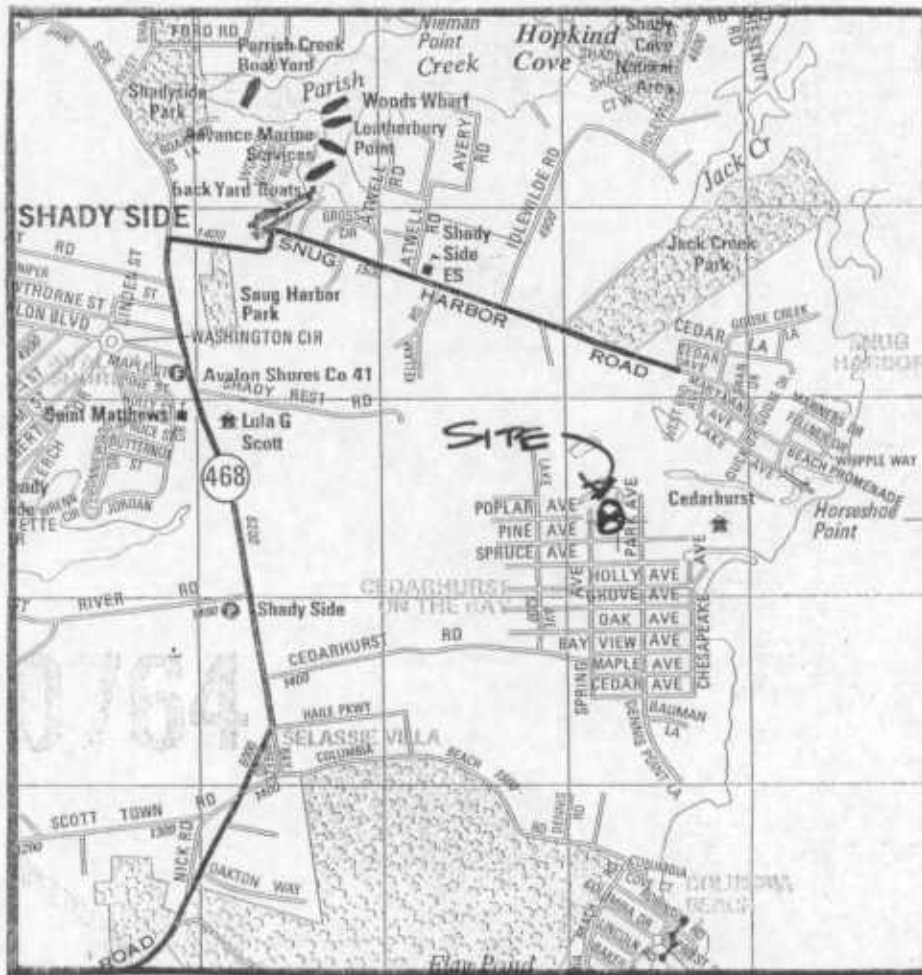
1. A brief explanation of why you need a variance or special exception. If you have applied for a building or grading permit, please list the permit number(s). _____
2. A VICINITY MAP showing clear directions to your property and the address.
3. A short, 1 or 2 sentence per item, NARRATIVE STATEMENT which provides the following information (if checked):
 - ☒ Type of predominant trees and shrubs (maple, oak, evergreen, etc.) on the entire parcel. (At least 15% of the lot must have trees and shrubs or additional plantings will be required. Trees and shrubs must cover the area 25' from the water on waterfront lots except for access area.)
 - ☒ Method of control of rainwater from existing and proposed structures, driveways and parking. (Where does it go now? Where will additional runoff go? Any special techniques?)
 - ☒ Methods to minimize impacts on water quality and habitat from proposed construction (e.g. stormwater management, sediment control, replanting, avoiding slopes).
 - ☒ Square footage of site that is currently wooded or has trees and shrubs; square footage to be disturbed by proposed work; acreage of lot; total impervious coverage before and after work (Any lot in LDA or RCA that is 21,780 square feet or less cannot have more than 25% impervious surface covered unless further restricted by plat. Lots over 1/2 acre cannot exceed 15% coverage.)
 - ☒ Habitat protection areas: Buffers, expanded buffers, wet lands, rare and endangered species, anadromous fish propagation waters, colonial water bird nesting sites, historic waterfowl staging and concentration areas, riparian forests 300' or more in width, forested blocks 100 acres or more, natural heritage areas, plant and wildlife habitats of local significance.
4. A PLAN of your property, drawn to scale (a plot plan, grading plan or building location survey can be used) showing (if checked):
 - ☒ ~~NA~~ Steep slopes (15% or greater - show any slope if you aren't sure of percentage of slope)
 - ☒ Existing tree line, individual trees and all proposed clearing, grading or any disturbance
 - ☒ Wetlands (tidal and nontidal) ☒ Floodplain (tidal and nontidal)
 - ☒ Any proposed planting or landscaping on property
 - ☐ Other (water depths, buffers as shown on record plat, habitat protection areas as identified in 3e, and plat notes)
- ☒ 5. ONE copy of a Notification of Project Application supplied with this check list.

Residential lots in IDA will be required to meet the criteria for LDA. Special circumstances where LDA criteria cannot be met will be reviewed in conjunction with the Critical Area Commission. Commercial, institutional or industrial uses in IDA must meet the 10% Pollutant Reduction Rule. If you have any questions or need assistance, please contact Lori Allen at (410) 222-7459.

1229 POPLAR AVENUE
SHADY SIDE, ANNE ARUNDEL COUNTY

VICINITY MAP

1" = 2000'



CEDARHURST ON THE BAY

1229 POPLAR AVENUE CRITICAL AREA REPORT

INTRODUCTION

The lot located at 1229 Poplar Avenue in Cedarhurst is presently unimproved. The site is 5,000 square feet in size and located in the Limited Development Area of the Critical Area. One single-family residence is proposed to be constructed on the lot. A variance has been requested to allow disturbance to a nontidal wetland and its buffer. An application for a permit from the State to allow that disturbance has been submitted.

VICINITY MAP

Included in this report and shown on the attached plan is a vicinity map designating the location of the subject site. Also included in the report is a portion of the Critical Area Map with the site located.

NARRATIVE

EXISTING CONDITIONS

The site is unimproved, mostly vegetated with scattered large trees and has a ditch along the western side of it. The trees onsite include 12 – 20" diameter southern red, red, and willow oaks; along with 4 – 10" diameter black locust, blackgum and mulberry. There are no specimen trees on the property. Also scattered on the lot are two species of greenbriar (common and glaucous), Japanese honeysuckle, poison ivy, grapevines, pokeweed, and black cherry seedlings. The groundcover is grass and gravel.

The ditch onsite is basically bare dirt but the edges of it have nontidal wetland vegetation, including Phragmites, wood reedgrass, tickseed sunflowers (all hydrophytic vegetation) and late-flowering thoroughwort (non-hydrophytic). The soils in the ditch are hydric in color and consistency. The majority of the lot is not a nontidal wetland.

There is an existing culvert allowing driveway access to the lot. This culvert is proposed to be replaced. There is another culvert that drains water from the ditch to the offsite wetland. This culvert will remain as is.

There are no steep slopes on the property, which is completely flat except for the minor change in elevation for the ditch. The soil type on site, per the soil survey, is Shadyoak-Elkton Complex. This soil has a k-factor of 0.43 (not an issue due to the lack

of slopes) and is hydric by definition. The ditch does have hydric soils, the remainder of the lot does not.

There was no wildlife noted the day of the fieldwork. No rare, threatened or endangered species were seen, nor expected given the developed nature of the area around the lot.

STORMWATER MANAGEMENT

There is no stormwater management on the lot at this time. With construction of the house, three rain gardens will be installed to use for stormwater management.

IMPACT MINIMIZATION

The access road to the lot is somewhat improved with gravel and roadside ditches. It is not possible to develop the lot without doing minimal impact to the wetland and more so to the buffer. A permit to impact the wetland and buffer has been submitted to the Department of the Environment. A copy of the permit will be forwarded to the County upon its receipt.

HABITAT PROTECTION AREAS

The Habitat Protection Area on this lot is the buffer to the nontidal wetlands. The wetlands encompass a small portion of the lot but the buffer takes up almost one-half of the lot. It is not possible to develop the lot without impacting the buffer.

PROPOSED CONDITIONS AND SITE CALCULATIONS

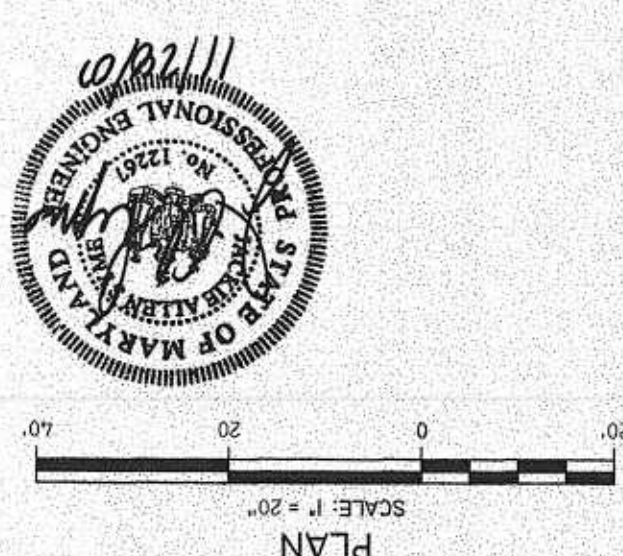
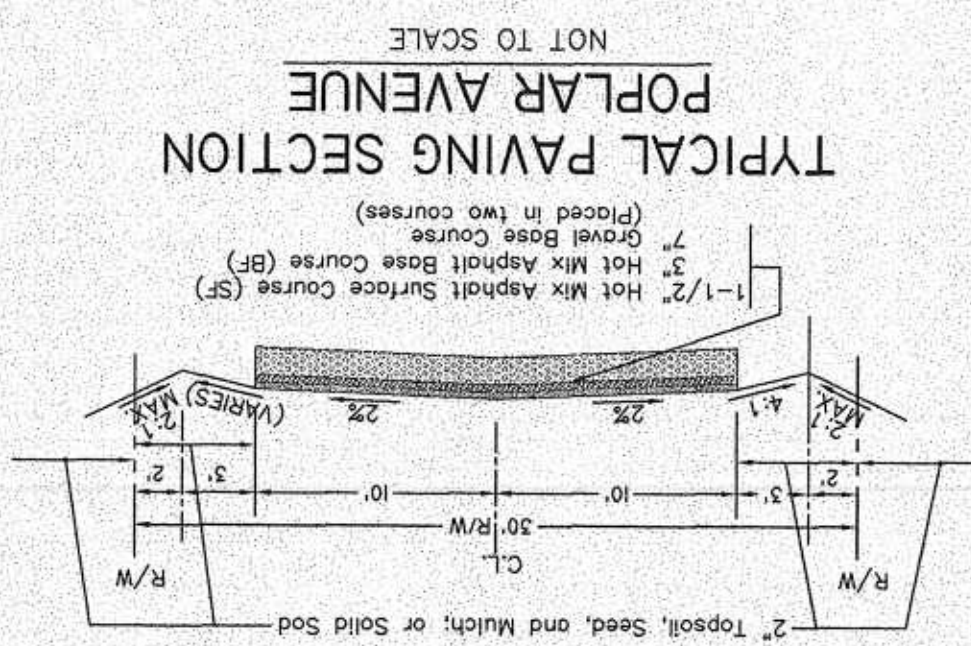
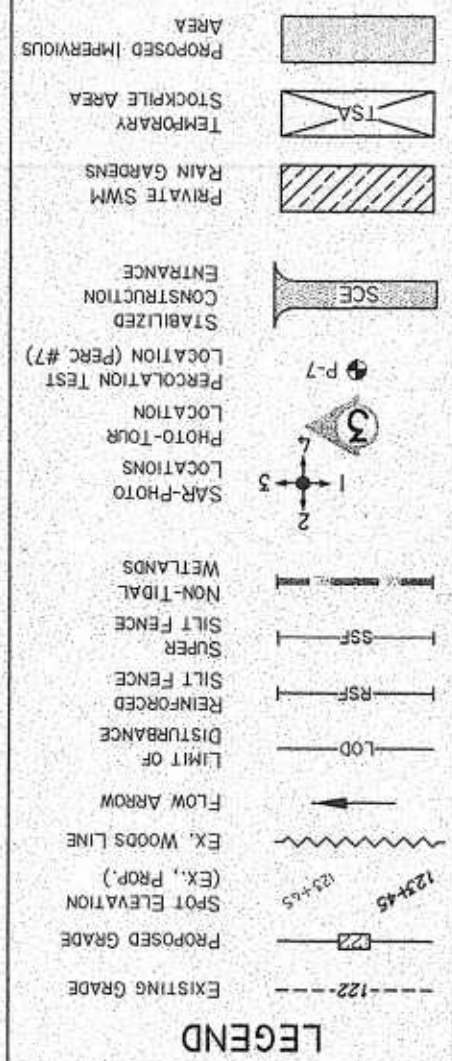
The proposed construction for the lot is shown on the plan and includes the house, driveway, well, and rain gardens. The site calculations are also shown on the plan.

CONCLUSIONS

Development of this lot will not be adverse to the goals of the Critical Area legislation. There are no sensitive areas being impacted. The house will be similar to those in the neighborhood and allowing its construction will not confer a special privilege on the owner.

PLANS

A plan showing the site and its proposed improvements is attached to this report.

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DIVERSIFIED PERMITS, INC.
CIVIL DESIGN AND
PERMIT SERVICES
P.O. Box 242
Millersville, MD 21108
Phone: 410-859-5583
Fax: 410-859-5584
Mail: robertbaxter27@aol.com

DATE:	NOV 2007	SHEET 2 OF 3
CHECKED BY:	RNT	SCALE: As Noted
DRAWN BY:	NHT/cje	G.P. #
X DISTRICT:	7th	TAX ACCT. NO.: 7159-0511-7000
TAX MAP:	69	GMP: 18
ANNE ARUNDEL COUNTY, MARYLAND	20764	MARCEL: 235
1229 POPLAR AVE, SHADY SIDE.		
CEDARHURST ON THE BAY		
BLOCK 30, LOT 16		
GRADING, EROSION AND SEDIMENT CONTROL PLAN		

